

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WESTERN DIVISION

C.A. No. 04CV30241-MAP

MICHAEL F. ERAI,

Plaintiff,

v.

TOWN OF ORANGE,

Defendant

DEFENDANT’S MOTION IN LIMINE
TO EXCLUDE ANY SEXUALLY
HARASSING COMMENTS
PURPORTEDLY MADE BY RICK
KWIATKOWSKI

Now comes the defendant, Town of Orange (“Town”), and hereby moves *in limine* to preclude the plaintiff, Michael F. Erali (“Erali”), from presenting any testimony from Evelyn Daly (“Daly”), or any other Town employee, pertaining to any sexually-harassing comments purportedly made by Rick Kwiatkowski (“Kwiatkowski”), Town Administrator. As grounds for this motion, the Defendant states that any such comments by Kwiatkowski are irrelevant, prejudicial and have no probative value to this matter. As further grounds therefore, the Defendant states that any such comments have no bearing on whether or not plaintiff worked in, or was subjected to, a hostile work environment in the Cemetery Department.

It is anticipated that at trial of this matter, plaintiff intends to elicit testimony from Daly that “Kwiatkowski was sexually harassing her.” See Plaintiff’s Motion In Limine to Preclude Defendant’s Assertion of Faragher/ Ellerth Defense, page 3. Whether or not Kwiatkowski made any sexually-harassing comments to Daly, however, is irrelevant to the issue of whether or not Daly made any sexually-harassing comments to Erali or otherwise subjected him to sexual harassment or discrimination. Comments that Kwiatkowski made to Daly fail to constitute evidence that Daly subjected Erali to sexual

harassment or discrimination. Additionally, allowing Erali to introduce such comments would unfairly prejudice and inflame the jury against the Defendant Town. Plaintiff has made no allegations against Kwiatkowski, and Kwiatkowski was not an employee of the Cemetery Department. As such, any comments that Kwiatkowski made to Daly, or any other Town employee, fail to constitute evidence that Erali worked in, or was subjected to, a hostile work environment at the Cemetery Department.

WHEREFORE, for the foregoing reasons, the Defendant respectfully requests that the within motion *in limine* be granted.

DEFENDANT,

TOWN OF ORANGE,
By its attorneys,

/s/ Carolyn M. Murray
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Dated: February 20, 2007

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